



March 8, 2001

Ms. Kimberley Mickelson
Olson & Olson
Attorneys at Law
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2001-0915

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144375.

The City of Friendswood Police Department (the "department"), which you represent, received a request for (1) the number of calls received by the department from the Friendswood Independent School District between August 1, 2000, and November 30, 2000, and (2) copies of incident reports for calls received from the Friendswood Independent School District between August 1, 2000, and November 30, 2000. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with sections 58.007 and 261.201 of the Family Code, and section 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first note that section 552.301(d) of the Government Code provides:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

¹Because you seek to withhold only a portion of the requested information, we assume that you have released the remainder of the responsive information to the requestor. See Gov't Code §§ 552.301, 302.

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

You state that the city received the written request for information on November 30, 2000. Therefore, the city was required to supply the requestor with notification and a copy of its written communication to the attorney general by December 14, 2000. You indicate in your December 14, 2000 letter requesting a decision from this office that you notified the requestor of your request for a ruling from this office "by separate letter." Nevertheless, the attorney for the requestor indicated in a letter to the city that the city failed to send the requestor a copy of its communication with this office. Under section 552.303, we requested that the city send us copies of the separate letter sent to the requestor notifying her of the city's request for a decision from this office as well as any other correspondence sent to the requestor or her representatives. You responded to our request by sending two pieces of correspondence sent to the requestor and her attorney. The first piece of correspondence, dated December 14, 2000, simply states that the city requested an opinion from the attorney general's office. While this was sufficient to satisfy the notification requirement of section 552.301(d)(1), it did not constitute a *copy* of the city's written communication to the attorney general for purposes of section 552.301(d)(2). The second piece of correspondence is an actual copy of the city's written communication to this office. However, this copy was not sent to the requestor's attorney until January 10, 2001, well after the ten-day deadline.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely provide the requestor with the information required by section 552.301(d) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You contend that the requested information is excepted under sections 552.101 and 552.108 of the Government Code. Section 552.101 generally provides a compelling reason for overcoming the presumption of openness. However, you have not demonstrated a compelling reason for withholding the requested information under section 552.108. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived); *but see* Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of another governmental body may provide a compelling reason for withholding the requested information).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

For the purposes of section 58.007, a child is “a person who is ... ten years of age or older and under 17 years of age” Fam. Code § 51.02(2)(A). Some of the submitted information involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information, which we have marked, is confidential pursuant to section 58.007(c) of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code.

With respect to the remainder of the information we will address your arguments under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You have not explained, nor is it apparent, that any of the information not otherwise protected by section 58.007 of the Family Code relates to a report or investigation of alleged abuse or neglect under chapter 261 of the Family Code. Therefore, none of the remaining information is confidential under section 261.201. Consequently, while you must withhold the information we have marked as confidential under section 58.007 of the Family Code, you must release the remainder of the information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

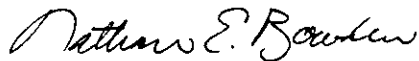
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 144375

Encl: Submitted documents

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